

Jan. 12. 1767.

A N S W E R S

F O R

Captain George Oliphant-Kinloch, purchaser of the lands of Lochblair; and for the representatives of Mr David Coupar of New Grange, and others, creditors of the deceased James Coupar of Lochblair, and of the also deceased Mr Henry Ramsay, professor of philosophy in the college of St Andrews;

T O

The PETITION of John Earl of Strathmore.

BY a minute of agreement entered into upon the 8th day of May 1691, betwixt Patrick Earl of Strathmore, now deceased, and James Coupar portioner of Coupar-Grange, upon the narrative, " That it
" had been formerly condescended on by word betwixt the
" said parties, That the said Earl should sell and dispoise, to
" the said James Coupar, the lands of Little Blair, with the
" loch thereof; and also the lands of Lochend, lying within
" the lordship of Scoon, and sherriffdom of Perth, with all
" right he could pretend to the teinds thereof, to be holden
" of himself, and his successors in his lordship of Glamis,
" for the yearly payment of L. 20 Scots in name of feu-duty,
" and doubling the said feu-duty at the entry of every heir,
" and paying three suits to his head-court when required :
A " and

“ and that, by a special clause in the infeftment, it should
 “ be provided, that the not payment of the feu-duty should
 “ be no cause of nullity or reduction ; but that it should be
 “ leifom to the Earl to poind and distrenzie the readiest goods
 “ upon the grounds of the lands, for payment thereof : and
 “ that the said James his entry to the said lands should be at
 “ Whitsunday 1689 : and that the said James should pay, to the
 “ said Earl, at the said term, the sum of 14,000 merks Scots
 “ money, *as the true and just price* agreed upon for the same :
 “ And accordingly, the said James had actually entered to the
 “ possession of the said lands, at the said term of Whitsunday
 “ 1689, and continued still peaceably in the same ; and had
 “ made several payments to the said Earl, and to others by
 “ his order ; all which did very near extend to the foresaid
 “ sum of 14,000 merks, agreed on as the price of the lands ;
 “ as was clear by the instructions thereof, then lying in the
 “ hands of the said James Coupar.” And, on the subsump-
 “ tion, “ That, notwithstanding the foresaid agreement, posses-
 “ sion, and payments, there had been no disposition nor
 “ charter granted by the said Earl, to the said James, of the
 “ said lands : therefore the Earl bound and obliged him his heir
 “ and successours, to procure himself duly and lawfully infeft
 “ in the said lands ; and to grant a disposition and charter
 “ thereof, in favours of the said James and his heirs irre-
 “ deemably, in terms of the agreement above mentioned ;
 “ extended with a clause of *warrantice absolute, and at all*
 “ *hands*, as to the lands of Little Blair ; and from his own
 “ proper facts and deeds allenary, as to the lands of Lochend ;
 “ and containing all other clauses necessary, as use is in feu
 “ dispositions and charters ; and that betwixt the date there-
 “ of, and the day of next to come. And,
 “ on the other part, the said James bound and obliged him,
 “ his heirs and executors, betwixt and the said day, to in-
 “ struct the payments of the agreed price of the said lands,
 “ and to deliver up the instructions thereof to the said Earl
 “ and

“ and his forefaids, and to pay what they ſhould fall ſhort of
 “ the full price above mentioned.”

Upon the 29th. day of November 1693, the ſaid Patrick
 Earl of Strathmore, “ for certain ſums of money then and
 “ before advanced, paid, and delivered to him, by James Cou-
 “ par of Coupar-Grange, fold, annailzied, and diſponed, ſet,
 “ and in feu-farm let, to the ſaid James Coupar, and Margaret
 “ Gib, his ſpouſe, in conjunct fee and liferent, and to An-
 “ drew Coupar their eldeſt ſon, and the heirs-male of his
 “ body; which failing, to Gilbert Coupar their ſecond ſon,
 “ and the heirs-male of his body; which failing, to James
 “ Coupar their third ſon, and the heirs-male of his body;
 “ which all failing, to James Coupar elder, his heirs and af-
 “ ſignies whatſoever, in fee, the lands of Little Blair, with
 “ the loch of Blair, as for the principal: and in like man-
 “ ner, the lands of Muirton and Milton of Ardblair, in ſpe-
 “ cial warrandice of the ſaid lands principally diſponed, ſwa
 “ that if at any time thereafter, the ſamen lands, loch, and
 “ others principally diſponed, or any part thereof, or any *an-*
 “ *nualrents*, or *yearly duties* to be uplifted, furth of the ſame,
 “ ſhould happen to be evicted from the ſaid James Coupar,
 “ or the heirs therein above rehearſed; or that they ſhould
 “ be hindered, ſtopped, and impeded in the peaceably bruik-
 “ ing and joyceing thereof; then, and in that caſe, they
 “ ſhould have full and free regreſs, ingreſs, and acceſs in and
 “ to the heritable poſſeſſion of the lands above mentioned,
 “ diſponed in warrandice, at leaſt to the property and heri-
 “ table poſſeſſion of the ſamen, as ſhould appear and correſpond
 “ to ſuch parts and portions of the lands principally diſponed,
 “ or *annualrents*, one or more, to be uplifted forth of the
 “ ſame, that ſhould happen to be evicted, and that propor-
 “ tionally to the ſaid evictions.” And, by that deed, “ the ſaid
 “ Earl further diſponed to the ſaid James Coupar, and Mar-
 “ garet Gib his ſpouſe, in conjunct fee and liferent, and the
 “ ſeveral heirs above mentioned, the lands of Lochend: and
 “ that.

“ that as the whole lands principally disponed were then
 “ possessed by the said James Coupar, and his tenants, since
 “ the year 1689 *inclusivè*; and the Earl thereby became
 “ bound to procure himself duly and lawfully infest and seised
 “ in the whole lands thereby disponed, in principal and war-
 “ randice, and thereupon duly and lawfully to infest and seise
 “ the said James Coupar and Margaret Gib, and the heirs
 “ above mentioned, in the said lands thereby disponed, prin-
 “ cipally and in warrandice, to be holden of him, his heirs
 “ and successours, in the lordship of Glamis, in feu-farm
 “ fee and heritage, for the yearly payment of L. 20 Scots
 “ money, and doubling the same in feu-farm duty the first
 “ year of the entry of each heir, and giving three suits to
 “ three head-courts, upon the ground of the said lands when
 “ required; providing that the not payment of the feu-farm
 “ duty, for the space of two or more terms, should be no
 “ cause of reduction of the feu infestment to follow there-
 “ upon; but that it should be lawful to cause poind and di-
 “ strenzie the readiest goods that should be upon the ground
 “ of the foresaid principal lands, for payment of the feu-duty
 “ that should happen to be resting for the time, and that
 “ *brevi manu*, without the hazard of any action of spoilzie,
 “ and that for *all other duty or exaction that can be craved for*
 “ *the lands, loch, and others above disponed*; which alienation,
 “ disposition, infestment appointed to follow thereupon, to-
 “ gether with the foresaid lands of Little Blair, loch, and
 “ pertinents, and warrandice-lands of the same, the Earl
 “ bound and obliged him, and his heirs, to warrand *at all*
 “ *hands, frae all claims, perils, dangers, and inconveniencies,*
 “ *against all deadly*; and to warrand the foresaid lands of
 “ Lochend, with the pertinents, from his own proper fact
 “ and deed allenary.” And, agreeably to this disposition, a
 charter having been accordingly granted, infestment was taken
 thereon by the said James Coupar.

The said James Coupar having left his affairs in disorder
 at his death, these lands of Little Blair, now called *Lochblair*,
 were,

were, in a process raised against his son, brought to a judicial sale before the court of session, and were purchased, in the year 1727, by Mr Henry Ramsay, professor of philosophy in the college of St Andrew's, for whom Mr David Coupar of New Grange became cautioner for the price; and from that decret of sale, p. 25. & 26. it appears, " That the said lands
 " of Little Blair were found to lie within the lordship of
 " Scoon; and that, by the Viscount of Stormont and his predecessors' investment produced in the decret of ranking
 " preceding that decret of sale, and by the act of annexation *anno* 1633, he, as Lord of erection of the abbacy of
 " Scoon, had right to the feu-duties payable forth of these
 " lands: That it was thereby found proven, that there was
 " a yearly feu-duty of L. 26 : 13 : 4 Scots payable forth of
 " the said lands, with four dozen of poultry, or 4 s. for each,
 " and two dozen of capons, or 6 s. 8 d. Scots for each, at the
 " terms used and wont; and that the said feu-duty was resting
 " to the said Viscount of Stormont for crop 1692, and
 " sincefyne; and that the Viscount was therefore preferred
 " to the haill other creditors of the said James Coupar of
 " Lochblair, for the said bygone feu-duties due for the said
 " crop 1692, and sincefyne; and it was thereby found, that
 " the said yearly feu-duties must affect the said lands of Little
 " Blair in all time coming; and that, in the event of a
 " sale, the said lands ought to be sold with the burden of the
 " said yearly feu-duty." But it likewise appears, from that decret of sale, p. 73. that though there be a deduction made from the proven rental of the lands of the feu-duty of L. 20 payable to the family of Strathmore, there is no deduction made of the feu-duty payable to the Viscount of Stormont.

The affairs of Mr Ramsay, the purchaser of these lands at the judicial sale, having likewise gone into disorder, the lands were again exposed to sale, in the year 1757, by his representatives, and likewise by those of Mr David Coupar, in whose favours Mr Ramsay had made over his purchase, for relief of

the engagements Mr Coupar had come under for him : and Captain George Oliphant-Kinloch having purchased the same, he, after having led an adjudication in implement of his purchase, was advised to raise a process of multiple-poidning, calling both the Earl of Strathmore and Viscount of Stormont ; in order to have it determined, how far he, as purchaser of these lands, stood bound to pay both the feu-duty claimed by the Earl, and that by the Viscount ; and how far he had relief against the Earl, of what he stood bound in to pay to the Viscount. In the course of which process, the Lord Auchinleck Ordinary, upon the 26th of February last, in absence, assailed the Earl, and discerned. But, upon a representation for the pursuer, and answers for the Earl, on the 5th of August last, pronounced the following interlocutor :

“ The Lord Ordinary having again considered this representation, with the answers, finds, That, as it is agreed between the parties, that the lands of Lochblair were anciently feued out by the abbacy of Scoon, for payment of the feu-duty of L. 44 : 5 : 4 yearly ; and that the family of Stormont got right to this abbacy as Lords of erection, and the family of Stormont [Strathmore] had the right of property of the lands of Lochblair, which they originally held of the said abbot, thereafter of the Lord Stormont, and thereafter of the crown, in virtue of the act of annexation of the superiority of church-lands to the crown ; but which act of annexation left the right to the feu-duties with the Lords of erection ; and as Patrick Earl of Strathmore, who was proprietor of Lochblair in the year 1693, held these lands of the crown for payment of the above-mentioned feu-duty, granted a feu-charter of these lands to James Coupar, to be held of him the Earl for payment of a feu-duty to his Lordship and his heirs, the Earl and his heirs, who retained the right of superiority held of the crown, continued to be subjected to the payment of the ancient feu-duty, and James Coupar, who got the lands for pay-

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“ ment of a feu-duty to that Earl, was nowise bound to re-
 “ lieve the Earl from payment of the feu-duty ; the crown’s
 “ vassal was bound to pay this, being a proper debt of the
 “ Earl’s own, and no obligation in the feu-right laid upon
 “ the vassal to relieve the Earl of it ; on the contrary, the
 “ Earl is thereby bound, to warrand against all claims, &c.
 “ and, in conformity thereto, when the lands were sold ju-
 “ dicially to Mr Ramsay, in the year 1727, no deduction
 “ was made from the rental, but of the feu-duty payable to
 “ the Earl of Strathmore, viz. L. 20. Scots : and, therefore,
 “ finds the Earl of Strathmore intitled to the feu-duty ; but
 “ that his Lordship must, *simul et semel*, when he receives it,
 “ clear off the feu-duty due to these now in the right of the
 “ lord of erection, the same being a burden on the lands of
 “ Lochblair, though not upon the proprietor of them.”

Of this judgment, the Earl of Strathmore having complain-
 ed to the Lord Ordinary by a representation, his Lordship,
 on the 5th of December last, upon advising that representa-
 tion, with the answers thereto, which were given in, not on-
 ly in name of Captain Kinloch, but in the name of the repre-
 sentatives of Mr David Coupar, and others, who, as creditors
 of the deceased James Coupar of Lochblair, or of Mr Henry
 Ramsay, apprehended they had an interest in the present que-
 stion ; “ adhered to the former interlocutor, and refused the
 “ desire of the representation ; and further, found the defend-
 “ er liable in the expence of this process, and appointed an ac-
 “ count thereof to be given in.”

Against these judgments of the Lord Ordinary, the Earl of
 Strathmore having now reclaimed to your Lordships ; where-
 in, after observing that this claim of relief against him of the
 feu-duties payable to the Lord Stormont, is a new disco-
 very made by Captain Kinloch, which was never thought of
 either by James Coupar, the original purchaser from the Earl
 of Strathmore, nor by Mr Ramsay, the purchaser at the judicial
 sale, who both paid the feu-duty of L. 20 to the Earl of
 Strathmore,

Strathmore, without making any claim for more than double that feu-duty, which was due out of the lands to the lord of erection, and actually by them paid; that Mr Ramsay must be considered to have purchased these lands with the burden of the feu-duty payable to the lord of erection, of which therefore he ought to have no relief from the Earl of Strathmore; and that, if such relief be competent, the Earl of Strathmore, in the year 1693, must have made a very foolish bargain, when he took his vassal bound to pay him only a feu-duty of L. 20 Scots, while he himself stood bound to relieve the lands feued of more than double that sum; his Lordship insists upon the following grounds for altering these judgments: *1st*, That, by the nature of the contract of sale, the seller is not obliged to relieve the purchaser of such a burden upon the subject as that of a feu-duty, unless it was so specially provided in the contract; which he endeavours to support by many authorities from the Roman law, your Lordships decisions, and the opinion of lawyers of great authority in this country. *2^{dly}*, That there is no such speciality in the present case in the clause of warrandice, as can distinguish the same from what would naturally have been included in the contract itself. And, *lastly*, Supposing the general principle of law were against the petitioner, yet there are specialities in this case which ought to make it an exception from the common rule.—The following answers to that petition are humbly submitted to your Lordships consideration.

That, with regard to the above-mentioned preliminary observations made for the Noble Earl the defender, all that the respondent shall say is, That if the claim now made for relief of these feu-duties payable to the family of Stormont be a new discovery only made by Captain Kinloch, James Coupar of Lochblair, Mr Henry Ramsay, and those deriving right from him, must have been extremely blind, since, by the above-mentioned minute of agreement, dated the 8th day of May 1691, Patrick Earl of Strathmore became bound to
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dispose the lands of Little Blair, to be holden of himself, for payment of a feu-duty of L. 20 Scots ; for which James Coupar had paid, or was to pay, the sum of 14,000 merks, as the true and just price agreed upon for the same : which lands of Lochblair were to be warranted at all hands, without any exception of the feu-duty payable to the Viscount of Stormont : That when, in implement of this minute, the disposition to these lands was actually granted, the same only bears a feu-duty of L. 20 Scots, and that for all other duty or exaction that can be claimed for the lands disposed : That the disposition not only contains a personal clause of warrandice with regard to the lands of Lochblair, at all hands, frae all claims, perils, dangers, and inconveniences, against all deadly ; but likewise contains a clause of real warrandice, whereby it is expressly provided, That in case the lands of Lochblair, or any part thereof, or any annualrents or yearly duties to be uplifted forth of the same should be evicted, then access should be had to the lands disposed in warrandice for as much as should correspond to the eviction of the principal lands, or of any annualrents to be uplifted forth of the same. Agreeably to which disposition a charter followed, whereupon infestment was taken. That in the decret of ranking of the creditors on these lands, the family of Strathmore's feu-charter was produced, and the deduction of the feu-duty therein mentioned accordingly made from the rental, before the lands were exposed to sale ; the Viscount of Stormont is preferred to the feu-duties due to him, but without any deduction of that feu-duty from the rental when the lands came to be sold : so that it is plain the subject was bought without any deduction from the price on account of that burden, the purchaser having relied upon the family of Strathmore's being bound to relieve him thereof. How far the feu-duty either to the Earl of Strathmore, or the Viscount of Stormont, may have been paid since the year 1693, the respondents will not take it upon them to say ; but this they will venture to say, That no payments
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made to the family of Stormont, can have any influence in the present question, as these behoved to be made, as the lands were subject thereto. Neither can any payments made to the family of Strathmore, upon the supposal that such were made, affect the singular successors of those who made such payments, so as to exclude them from the right of relief of the feu-duties due to the family of Stormont, subsequent to the right of these singular successors. Neither indeed, in the respondents apprehension, would payment made by James Coupar himself, of both these feu-duties, which is a fact the respondents know nothing of, barr him or his heirs from insisting, whenever they thought proper, upon their right from the family of Strathmore, for relief of the feu-duties payable to the family of Stormont. And as to the foolish bargain, it is said, Patrick Earl of Strathmore, in this sense of the matter, must have made, the respondents humbly apprehend it must be presumed, that his Lordship got full value for the subject, supposing the same to be free of any feu-duty payable to the Viscount of Stormont; and that, upon that account, he became bound to relieve the purchaser of such burden. For what the respondents know, the Earl might then have had it in view to purchase, from the family of Stormont, a right to this feu-duty; or, perhaps, acquire a right from the crown to redeem it at ten years purchase, as the law then stood.

But to proceed to the grounds in law, whereon the petitioner insists for an alteration of the judgments given by the Lord Ordinary, it is answered to the *first* of these, That the respondents readily admit, that, by a contract of sale in its own nature, a seller is only bound to secure a purchaser against the eviction of the subject sold, upon any preferable right: but that he is not bound to secure him against burdens, that, in the nature of the thing, affect the subject purchased; because such are by public law imposed upon the subject sold, and are considered to be a yearly deduction from
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the profits thereof. But they can by no means admit, that a feu-duty is to be considered as a burden imposed by public law, as no feu-duty is so imposed, but only by the private feudal contract betwixt the superior and the vassal. That then, if one person shall acquire a feu-right from another, for payment of a certain feu-duty, he is nowise concerned with what feu-duty the disposer may be liable in to his own superior, as he rests upon the faith of the disposer, that he shall relieve the lands of the feu-duty payable to his own superior, in the same manner as a person does when he purchases lands and pays the price, notwithstanding he sees the lands affected with an heritable debt. That as in this case the seller could not, in the respondents apprehension, maintain, that the purchaser behoved to bear the burden of that heritable debt; neither can the Earl of Strathmore, in the present case, insist that the burden of this feu-duty should lie upon his vassal, and not upon himself; his predecessor having disposed the lands at an adequate price, for payment of a certain feu-duty only, without any mention of that due to the lord of erection. And the present case has the greater affinity to that of an annualrent by an heritable bond affecting lands sold, that truly the feu-duty payable to the lord of erection is no more than an annual rent; the Earl of Strathmore, and not the Lord Stormont, the lord of erection, having held these lands of the crown.

That, in the respondents humble apprehension, the petitioner is greatly mistaken in his quotation from the Roman law, in support of what is endeavoured to be maintained by him: He has cited Voet, who, in his commentary upon the Pandex, in the title *De periculo de commodo rei vendite*, § 8. says, *Etiam onera realia vendite rei inhærentia inemptorem transfunt, veluti tributorum census canonis solarii et similium*. But, upon attentively considering that paragraph, with the laws therein referred to, it is plain, that that learned author meant no more, than that the real burdens there mentioned
affected

affected the subjects purchased without any regard to the question, how far the purchaser, by the contract betwixt the seller and him, had a right of relief of those burdens or not : This is manifest from hence, that he there not only says, that these burdens affect the purchaser for time to come, but likewise for time past, from the reason given by him, That the subjects themselves were liable to a legal hypothec for these burdens; and from one of the laws there cited by him, *L. 7. De publicanis*, which expressly bears, that purchasers have a right of action against the sellers, for relief of such burdens that they were ignorant of.

That with regard to the authorities cited by the petitioner from your Lordships decisions, and the opinion of lawyers in this country, the respondents apprehend, that the citation from Balfour's Practics does not at all apply to the present case, for the reason given by that author himself, namely, That the casualties of ward, relief, and non-entry, pertains to the superior by the common law of the realm, from which no man is exempt, and should be known to all ; whereas, in the present case, a feu-duty is not due by the common law of the realm, whereby all lands were originally held ward, and were presumed to be so, unless the contrary appeared ; but is due by particular paction, which no purchaser of a subject for an adequate price, without any mention of that feu-duty, was to consider as a burden ultimately to lie upon him.

That the authority cited from Lord Stair and Lord Bankton, with the decisions therein referred to, apply only to servitudes ; and what these learned authors say, seems to be agreeable to the doctrine of the Civil law, That warrandice is not incurred by a subject sold being found liable in a common servitude, which however has never been understood to extend to the case of any part of the subject sold being found liable in an *ususfructus*, according to many texts of the Civil law, particularly *L. 46. 49. 62. § ult.* and for the same reason, cannot be understood of an annual duty not naturally inherent

herent in the thing payable out of the same. And the decision mentioned from Lord Stair, 1st July 1676, Auchintoul contra Innes, concerning the designation of a glebe out of kirk-lands, respects only such cases where the burden complained of was imposed by public law, whereas, as has been already observed, feu-duties are not imposed by public law, but by private paction.

That as to the *second* ground of the petition, That there is nothing here special in the clause of warrandice contained in the petitioner's predecessor's disposition to James Coupar, that can subject him to payment of the feu-duties due to the family of Stormont, the respondents readily agree with the petitioner in this, That, with respect to the present question, there is nothing in this clause of warrandice which the nature of the thing itself would not import. At the same time they must observe, That if there was any dubiety, how far, in the nature of the thing, these feu-duties payable to the family of Stormont ultimately lie on the family of Strathmore, the superiors, or James Coupar and his successors, their vassals; the whole *res gesta*, as appears from the minute of agreement, disposition in implement thereof, and charter and seisin following thereupon, all above mentioned, makes the matter extremely clear: for thereby it appears, that the lands were agreed to be sold at what was understood by the parties to be an adequate price; which price was accordingly paid, and that in implement of that minute of agreement: and, agreeable to the terms thereof, the lands were disposed, to be held of the granter, for payment of a feu-duty of L. 20 Scots, in name of every other burden: That, by that disposition, not only personal warrandice is granted at all hands, and against all deadly, but the real warrandice is granted; wherein is particularly expressed the case that any annualrents or yearly duties, to be uplifted forth of the lands principally disposed, should be evicted: in terms of which disposition, a charter and seisin followed. All this considered together, the respondents cannot perceive,

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ceive how it can be doubted, that the Earl of Strathmore thereby became liable to relieve the subject disposed of the feu-duties payable to the lord of erection, which, though they were a real burden upon the lands, and consequently behoved so far to affect the vassal, yet they were the proper debt of the Earl of Strathmore, who, as the crown's vassal, in consequence of the statutes made for that purpose, was liable to pay that feu-duty to the lord of erection; and that he must have had particularly in view this very burden which he was to relieve his vassal of, whether it shall be supposed he had at that time a view of acquiring a right to these feu-duties or not.

That as to the *last* ground of the petition, which concerns the intention of the parties in this case, the respondents will be forgiven, in the *first* place, to dispute what the petitioner has endeavoured to maintain, That, upon the supposal that such was the intention of the original contractors, the singular successors of the vassal would be equally affected thereby, as the original vassal himself and his heirs; for, in the respondent's humble apprehension, there having been once a feudal right established in the vassal, whereby the property of the subject was vested in him, subject only to a feu-duty of L. 20, and nothing reserved to the superior but the right of superiority, with that feu-duty, the action he had to be relieved of the feu-duties payable to the lord of erection, upon the supposal that such was the bargain, was merely personal, and no real burden upon the lands themselves; so that the vassals singular successors could by no means be affected therewith.

But, in the *second* place, The respondents apprehend, that they have no occasion to enlarge upon this argument, as they can perceive no reason to believe that ever it was agreed upon, that these feu-duties, payable to the Viscount of Stormont, should be a burden upon the vassal, and not upon the superior.

The respondents own, that they do not well comprehend the force of the argument used for the petitioner, drawn from the

the fitted accounts cleared betwixt Patrick Earl of Strathmore, and James Coupar, his factor; whence it appears, that the feu-duties payable to the family of Stormont were only taken credit for the year 1688, being the year immediately preceding that in which James Coupar's purchase of these lands took effect; as it will not at all follow from hence, that these feu-duties for the years downwards were not taken credit for in subsequent accounts. And as it is extremely probable, that, when these accounts were cleared, which was on the 7th of May 1691, the Lord Stormont did not receive payment of his feu-duty for the year 1689; neither does it occur, what influence the oath emitted by the Viscount of Stormont, in the above-mentioned process of ranking, can have upon the present question: for, though it thereby appears, his Lordship had received payment of his feu-duties down to the year 1692, from Coupar of Lochblair; yet it does not thence follow, that Lochblair paid these feu-duties in his own name; and it is much more probable, that he paid the same in name of the Earl of Strathmore, and took credit for ' in his accounts accordingly. And as to what is alled of Mr Henry Ramsay's having paid the feu-duty to the Earl of Strathmore, without demanding relief of that paid to the Viscount of Stormont, the respondents do not know how that fact stands; but, upon the supposal that some such payments had been made to the family of Strathmore by Mr Ramsay, while he, at the same time had paid the feu-duty to the Viscount of Stormont, all the consequence that can be drawn from that is, that Mr Ramsay was guilty of a piece of inadvertency in not attending, that, in so far as he had paid to the Viscount of Stormont, he had a right of relief against the Earl of Strathmore.

The respondents can by no means admit the justice of the petitioner's criticism upon the monosyllable *then*, expressed in the fitted accounts betwixt Patrick Earl of Strathmore, and the said James Coupar his factor, upon the 7th of May 1691,
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as if, because the feu-duties payable to the family of Stormont for the year 1688, and precedings, were said to be then payable by the Earl, it followed, that these feu-duties were afterwards to be paid by James Coupar himself, as purchaser of the lands. The respondents can affix no other meaning to that word *then* than that the feu-duties for which credit was taken had then become due.

The respondents shall conclude with observing, That as they hope it will appear to your Lordships, that the merits of the question are plainly upon their side, and that the Noble Earl, the petitioner, is, by the bargain with his predecessor, clearly bound to relieve the lands disposed by him to James Coupar, of the feu-duties payable to the family of Stormont, he of consequence falls to be found liable for the expence of this process, agreeable to the judgment given by the Lord Ordinary.

In respect whereof, &c.

DAVID GRÆME.

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